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Does the Threat of Gentrification Justify Restrictive Zoning?

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Zoning and Land Use Planning

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DOES THE THREAT OF GENTRIFICATION JUSTIFY RESTRICTIVE ZONING?

Historically, municipal zoning codes have made housing more expensive by restricting housing supply, thus excluding low-income households from many neighborhoods. Political progressives once opposed such “exclusionary zoning.” But some progressives now argue that new housing may displace the poor by encouraging gentrification, and thus favor more restrictive zoning in at least some urban neighborhoods. Part I of this Article describes the growth of urban housing prices and the progressive response. Part II of the Article critiques claims that new housing increases housing prices. Part III suggests that the answer to high housing costs is more housing and less zoning.

I. Background

Courts have repeatedly stated that one legitimate objective of zoning is to protect property values- that is, to make houses and apartments more expensive than would otherwise be the case.¹ Municipalities have achieved that goal by limit-

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¹See, e.g., *Omnipoint Corp. v. Zoning Hearing Bd. of Pine Grove Tp.*, 181 F.3d 403, 408 (3d Cir. 1999) (valid “traditional zoning considerations” include “to protect the value of neighboring properties”); *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1375 (11th Cir. 1993) (“permissible bases for land use restrictions include concern about the effect of the proposed development on . . . [among other factors] surrounding property values”). Cf. Andrea J. Boyack, *Limiting the Collective Right to Exclude*, 44 *Fordham Urb. L.J.* 451, 464 (2017) (courts have upheld restrictive zoning “most commonly [based on] the purportedly legitimate objective of promoting local property values”).

ing the construction of apartments² and smaller houses,³ thus artificially constricting the housing supply and raising rents and home prices.⁴ Traditionally, political progressives have opposed such exclusionary zoning,⁵ asserting that such policies trap the poor in declining cities by locking them out of affluent suburbs with high-quality public services.⁶

Over the past decade or two, the most urban neighborhoods have become more popular, especially among more affluent Americans.⁷ As downtown populations have grown, the demand for urban housing (and thus its cost) has increased. Since 2000, housing prices in city centers have increased 50 percent more rapidly than in metropolitan areas generally.⁸

The rising popularity of urban life has also led to gentrification—which I define for the purposes of this article as “the social advancement of an inner urban area by the arrival of

²See Robert L. Liberty, *Abolishing Exclusionary Zoning: A Natural Policy Alliance for Environmentalists and Affordable Housing Advocates*, 30 B.C. ENVTL. L. AFF. R. 581, 582 (2003) (historically, “city planners treated apartments and other kinds of multifamily housing as equally noxious, a threat to property values and public welfare”).

³See Jeffrey M. Lehmann, *Reversing Judicial Deference Towards Exclusionary Zoning: A Suggested Approach*, 12-WTR J. Affordable Housing & Community Dev. L. 229, 231 n. 24 (2003) (municipalities require large houses on large lots “to increase property values and lower density”).

⁴*Id.* at 231–32.

⁵See Robert L. Lineberry, *Mandating Urban Equality: The Distribution of Municipal Public Services*, 53 Tex. L. Rev. 26, 30 (1974) (“Exclusionary zoning has become the principal target of liberals and civil rights groups who want to open the suburbs to all racial and economic groups.”)

⁶*Id.* at 30–31 (noting that exclusionary zoning keeps poor out of suburbs, and that suburbs tend to have more affluence and better public services than cities). *Cf.* Boyack, *supra* note 1, at 468–69 (exclusion of poor increases property values).

⁷See Luke Juday, *The Changing Shape of America’s Metro Areas*, at <http://statchatva.org/changing-shape-of-american-cities> (since 1990, population within one mile of city center increased from 1.3 million to 1.52 million in 50 largest metropolitan areas; per capita income now exceeds that of neighborhoods further from downtown).

⁸See FitchRatings, *Fitch: U.S. Housing Demand Pendulum Swinging Back Towards City Centers*, at <https://www.fitchratings.com/site/pr/989360>.

affluent middle-class residents.”⁹ Gentrification is controversial because it may lead to displacement of a neighborhood’s current lower-income residents, as rising demand for a neighborhood leads to rising demand for housing, thus causing housing costs to increase, thus pricing out existing residents.¹⁰ In fact, some commentators view gentrification and displacement as synonymous: Bethany Li writes that gentrification is “a process that displaces low-income residents and systematically remakes the class composition and character of a neighborhood.”¹¹ Progressives are especially likely to believe to treat gentrification and displacement as synonymous.¹² Some of these progressives argue that the construction of new housing actually accelerates such gentrification,¹³ by driving up land values.¹⁴ These commentators suggest that:

1. Upzoning (i.e. altering zoning laws to allow more hous-

⁹See Ray Telles, *Forgotten Voices: Gentrification and Its Victims*, 3 Scholar 115, 124 n. 56 (2000) (citation omitted) (noting that this is just one of several definitions).

¹⁰*Id.* at 131.

¹¹Bethany Y. Li, *Now is the Time! Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 Fordham L. Rev. 1189, 1190 (2016).

¹²*Cf.* M. Tanner Claggett, *If It’s Not Mixed-Income, It Won’t Be Transit-Oriented: Ensuring Our Future Developments Are Equitable & Promote Transit*, 41 Transp. L.J. 1 (2014) (“Liberals contend, of course, that displacement is a necessary symptom of gentrification, while conservatives say it is not”).

¹³See, e.g., Randy Shaw, *Krugman Wrong on Gentrification*, at <https://www.laprogressive.com/krugman-gentrification> (post in “L.A. Progressive” blog arguing that 2000s upzonings in New York created gentrification); Abigail Savitch-Lew, *East Harlem Rezoning Hearing: Residents Beg Brewer To Vote No*, at <http://citylimits.org/2017/07/14/east-harlem-rezonin-g-hearing-residents-beg-brewer-to-vote-no/> (neighborhood activists oppose upzoning because of fears of gentrification). I note, however, that this view is hardly universal on the Left. New York’s Mayor DeBlasio, hardly a conservative, favors upzoning many neighborhoods. See Vivian Yee and Mireya Navarro, *Some See Risk in DeBlasio’s Bid to Add Housing*, New York Times, Feb. 3, 2015, at https://www.nytimes.com/2015/02/04/nyregion/an-obstacle-to-mayor-de-blasios-affordable-housing-plan-neighborhood-resistance.html?_r=0 (describing DeBlasio proposals and neighborhood resistance to same); Ross Barkan, *Who’s Afraid of Bill DeBlasio?*, Village Voice, July 7, 2017, at <https://www.villagevoice.com/2017/07/07/whos-afraid-of-bill-de-blasio> (DeBlasio “the most liberal mayor New York City has had since John Lindsay left office in 1973”).

ing units on a parcel of land) leads to rising housing costs and to gentrification.¹⁵

2. Gentrification leads to displacement.¹⁶

It logically follows from propositions 1 and 2 that new urban market-rate¹⁷ housing causes displacement, and that cities should therefore downzone in order to impede the construction of such housing. This strategy would create a new kind of exclusionary zoning- zoning designed to exclude the affluent rather than the poor. Although anti-gentrification commentators are not always radical enough to explicitly endorse such exclusion, they sometimes favor policies that might discourage housing construction.

For example, Thomas Angotti favors giving neighborhoods more power over zoning.¹⁸ Because neighborhood homeowners are unlikely to benefit from having new neighbors, they are likely to support restrictive zoning that reduces housing supply. Li argues that a municipality might violate the Fair Housing Act (FHA)¹⁹ “if the municipality’s action causes an increase in rents that displaces low-income tenants and

¹⁴See Thomas Angotti, *Zoned Out: Race, Displacement and City Planning in New York City* 37 (2016).

¹⁵See Li, *supra* note 11, at 1191 (“Zoning is one of the most prominent tools local government use to gentrify”).

¹⁶See *supra* notes— and accompanying text.

¹⁷Obviously, this argument would not apply to government-subsidized housing targeted towards lower-income renters; such housing is unlikely to spur gentrification. See Tom Angotti, *Real Community Planning in NYC Would Let Us Talk About Race*, at <http://citylimits.org/2016/09/28/cityviews-real-community-planning-in-nyc-would-let-us-talk-about-race> (endorsing additional public spending on public housing); Samuel Stein, *DeBlasio’s Doomed Housing Plan*, at <https://www.jacobinmag.com/2014/10/de-blasios-doomed-housing-plan> (endorsing “community land trusts” that would build lower-cost housing on land owned by nonprofits).

¹⁸See Angotti, *supra* note 17 (endorsing “community-based planning” that would give neighborhood community boards more power).

¹⁹42 U.S.C.A. 3601 et. seq. Under the Act’s disparate impact doctrine, a plaintiff can show a prima facie case of housing discrimination if a practice has a disparate impact against a group protected by the Act- for example, if it harms Asians more than whites. See 24 C.F.R. 100.500(a). I note that even if a prima facie case was established, the defendant’s practice is valid if it can show that it is necessary to achieve a legitimate, nondiscriminatory interest, and that no less discriminatory alternative can serve that interest. *Id.*, subsec. (b).

raises local housing demand, ultimately resulting in a less integrated community.”²⁰ So if upzoning does lead to such displacement, it might violate the FHA.²¹ Li also favors policies that might make new housing more costly. In particular, she writes that because low-income residents have created “social capital”²² in their neighborhoods, developers in such places should “compensate for labor spent building that social capital”²³ for example, through community benefits agreements that “specify the benefits that the community is able to extract from a developer and include such tangible items as apartment units and public space that could be monetarily valued.”²⁴ If developers in gentrifying areas were able to pass on the costs of these amenities to renters and buyers, obviously new housing would become more expensive. And if developers were *not* able to pass on those costs, they would have lower profits and thus less incentive to build new housing, thus decreasing citywide housing supply.

II. Flaws In The Argument

The progressive anti-gentrification/upzoning argument can be broken down into two separate claims: that (a) gentrification has increased to an alarming extent (especially in upzoned areas), and (b) upzoning causes gentrification, which in turn causes rising housing costs. Each of these claims will be addressed in turn.

A. Not-So-Hyper Gentrification

Li writes that upzoning has created “hypergentrification . . . [which is] a rapid influx of development and affluent populations into urban areas,”²⁵ which in “wealthy cities, like New York and San Francisco, may result in displacement of low-income people of color from the city and even

²⁰See Li, *supra* note 11, at 1219 (citation omitted).

²¹Li does not go so far as to argue that upzoning generally violates the FHA. She emphasizes that New York downzoned white, middle-class areas while upzoning lower-income areas. *Id.* at 1220. So she might not oppose upzoning that applied equally to a wide variety of neighborhoods.

²²*Id.* at 1240.

²³*Id.*

²⁴*Id.* at 1241.

²⁵*Id.* at 1190–91.

the surrounding region.”²⁶ She points out, for example, that the number of blacks in Brooklyn declined between 2000 and 2010,²⁷ and that evictions in Oakland have risen 300 percent since 1998.²⁸

Undoubtedly, many urban neighborhoods are more affluent than they were a few decades ago.²⁹ But on balance, cities still tend to be far poorer than their suburbs: nationally, the percentage of persons living in poverty is twice as high in cities as in suburbs.³⁰ Although poverty rates have declined since 1990 in the downtown neighborhoods of the 50 largest U.S. metropolitan areas, poverty rates two or three miles from downtown are now higher than in 1990.³¹

Even expensive cities such as New York and San Francisco have higher poverty rates than their suburbs.³² These cities have become more racially diverse as well: although New York City’s black population has declined since 1999, its white population has also declined, while its Hispanic and Asian populations have grown by hundreds of thousands of people.³³ The city’s poverty rate decreased only slightly, from 21.2 percent to 20.6 percent—more than three times the 6.2 percent poverty rate of suburban Nassau County.³⁴ Similarly, in San Francisco the Hispanic population increased by

²⁶*Id.* at 1196.

²⁷*Id.* at 1198.

²⁸*Id.*

²⁹See Juday, *supra* note 7 (noting increased wealth of neighborhoods closest to downtowns).

³⁰See Elizabeth Kneebone and Alan Berube, *Confronting Suburban Poverty in America* 35 (2013).

³¹See Juday, *supra* note 7 (one mile from downtown, poverty rates decreased from 26 percent in 1990 to 25 percent in 2015; two miles out percentages reversed, and three miles out poverty rates increased from 22 percent in 1990 to 24 percent in 2015).

³²See Michael Lewyn, *How Real is Gentrification?*, 43 Real Est. L.J. 344, 346 (2014).

³³See U.S. Bureau of the Census, American FactFinder, *Community Facts*, at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Hispanic population increased from 2.1 million to 2.4 million, while its Asian population increased from 0.7 million to 1.1 million) (“Factfinder”). Similarly, in Oakland the black population decreased, while the Hispanic population increased from 87,467 to 106,643. *Id.*

³⁴*Id.*

almost 20 percent since 1999, and the Asian population by over 20 percent.³⁵ San Francisco's poverty rate increased from 11.3 percent to 13.2 percent, and Oakland's poverty rate increased from 19.4 percent to 20.4 percent.³⁶

Even some gentrifying upzoned neighborhoods are hardly "hypergentrified" (if "hypergentrification" means a rapid demographic transition from diverse poverty to lily-white wealth). Li's primary case study of gentrification focuses on New York City's 2008 upzoning of "predominantly low-income neighborhoods of color of Chinatown and portions of the Lower East Side."³⁷ Li writes that the upzoning "resulted in new housing units that are always rented and sold at market rate"³⁸ which in turn "cause[d] indirect displacement by spiking the neighborhood's rental and home sale prices."³⁹

The only zip code that includes both Chinatown and the Lower East Side is 10002.⁴⁰ If this zip code had truly hypergentrified, there would have been massive decreases in poverty rates, massive increases in the number of non-Hispanic whites, and massive decreases in the number of Asians and Latinos (the dominant pre-rezoning racial groups)⁴¹ in the neighborhood. But in fact, the zip code's poverty rate *increased* slightly between 2000 and 2015, from 29.4 percent to 30.2 percent of the population.⁴² The number of non-Hispanic whites increased- but only by about 8

³⁵*Id.* (Hispanic population increased from 109,504 to 128,619, Asian population from 235,565 to 284,426).

³⁶*Id.*

³⁷*See* Li, *supra* note 11, at 1206.

³⁸*Id.* at 1207.

³⁹*Id.* at 1208.

⁴⁰*See City Data*, www.city-data.com (enter "Chinatown" and "Lower East Side" to find profiles of these neighborhoods).

⁴¹*See* Li, *supra* note 11, at 1206 (poorer area affected by upzoning dominated by Asians and Latinos).

⁴²*See* Factfinder, *supra* note 33. It could be argued that the increase in neighborhood poverty rate was caused by young people who lack significant income but are subsidized by their affluent parents. But this theory is disproven by the fact that the poverty rate for persons under 18 also increased, from 38 percent to 43.2 percent. *Id.* Thus, poverty increased even among families with children.

percent (from 22,140 to 23,866).⁴³ The number of Asians and Hispanics combined decreased from 64,502 to 56,233, a 13 percent decrease.⁴⁴ In sum, the evidence suggests modest racial transition, but very little economic transition.

Admittedly, the increase in the number of whites might be evidence of gentrification. And rents did rise during this period: the percentage of persons paying over \$1000 per month for rent rose from 32.8 percent to 40.4 percent between 2011 and 2015.⁴⁵ But this increase was roughly comparable to the increase for Manhattan as a whole; the borough-wide percentage of persons paying over \$1000 rose from 63.2 percent in 2011 to 69.2 percent in 2015.⁴⁶ Similarly, in zip code 10009 (a significantly more affluent zip code just north of 10002) the percentage of persons paying over \$1000 rose from 63.4 percent in 2011 to 68.1 percent in 2015.⁴⁷ Given the similarity between zip code 10002 and Manhattan as a whole, it seems likely that the rent increase in that zip code was caused not by upzoning, but by the same forces that spurred citywide rent increases.

This view is supported by evidence that rents in fact did *not* rise more rapidly after the rezoning than in the years immediately preceding the rezoning. Although I do not have any data on pre-2008 rents for zip code 10002, rents in the broader Lower East Side/Chinatown area rose just as rapidly before the rezoning as afterwards. Between 2000 and 2006, rent increased by 18 percent in inflation-adjusted dollars (from \$780 to \$920).⁴⁸ Between 2006 and 2015 median rents also rose by 18 percent (from \$920 to \$1090).⁴⁹

⁴³*Id.*

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸See NYU Furman Center, *State of New York City's Housing and Neighborhoods 2016* at 76, at http://furmancenter.org/files/sotc/SOC_2016_Full.pdf.

⁴⁹*Id.* On the other hand, this was not true in every upzoned neighborhood. In Greenpoint/Williamsburg, rents rose by 11 percent between 2000 and 2006, and by over 50 percent between 2006 and 2015. *Id.* at 54. *Cf.* Angotti, *supra* note 14, at 91 (Williamsburg upzoned in 2005).

B. Does More Supply Equal Higher Rent?

Leaving aside the question of how much gentrification occurred, a question more relevant to policy is: did upzoning cause rising rents? Anti-gentrification commentators suggest as much, and thus imply that increasing the supply of housing actually increases the price of housing.⁵⁰

Obviously, such a claim is inconsistent with the law of supply and demand; normally, increased supply of a commodity lowers prices, and reduced supply increases prices. Moreover, such a claim seems inconsistent with national housing cost trends: generally, the cities where housing supply has grown rapidly tend to have *lower* housing costs than those with limited supply.⁵¹ Table 1 below compares regional housing supply growth to regional rents.

Table 1: Housing supply and housing costs

Percent change in number

Of housing units, 2000-15⁵² median monthly rent⁵³ (in dollars)

Pro-growth metro areas (over 30 percent increase in housing supply)

Austin	58	1144
Las Vegas	55	800
Orlando	44	975
Houston	39	962
Phoenix	39	800
Charlotte	39	926

⁵⁰See Li, *supra* note 11, at 119 (questioning relevance of law of supply and demand to housing prices).

⁵¹See Laura Kusisto, *Venice Beach is a Hot Place to Live, So Why is Its Housing Supply Shrinking?*, Wall Street Journal, July 16, 2017, at <https://www.wsj.com/articles/venice-beach-is-a-hot-place-to-live-so-why-is-its-housing-supply-shrinking-1500206400>.

⁵²See Issi Romem, *The Toughest Places to Build: Behind the Scenes of a Wall Street Journal Analysis*, at <https://www.buildzoom.com/blog/the-toughest-places-to-build-behind-the-scenes-of-a-wall-street-journal-analysis>.

⁵³See Geoff Boeing and Paul Waddell, *New Insights into Rental Housing Markets across the United States: Web Scraping and Analyzing Craigslist Rental Listings* 14–15, at https://www.researchgate.net/publication/306400541_New_Insights_into_Rental_Housing_Markets_across_the_United_States_Web_Scraping_and_Analyzing_Craigslist_Rental_Listings.

San Antonio	34	840
Dallas	33	1100
Jacksonville	31	795
Slow-growth metros (under 15 percent increase in housing supply) ⁵⁴		
Providence	5	1150
Philadelphia	7	1445
New York	7	2500
Hartford	7	1100
Los Angeles	8	1760
Milwaukee	8	900
Boston	9	2400
Baltimore	10	1225
	10 (San Francisco)	2323
San Francisco/San Jose	13 (San Jose)	
Cincinnati	11	750
Birmingham	12	849
San Diego	14	1635

Table 1 shows that of the nine metro areas with rapidly growing housing supply, every single one had median rents below \$1150. By contrast, eight of the twelve slow-growth metros had rent at or above this level. So there does appear to be a strong, if not complete, correlation between housing supply growth and low rents. It follows that zoning policies that restrict housing supply are likely to *increase* rents.⁵⁵

⁵⁴This group excludes several regions with stagnant or declining population and thus declining demand for housing. *See* Romem, *supra* note 52 (excluding Pittsburgh, Rochester, New Orleans, Buffalo, Cleveland, and Detroit).

⁵⁵This view is supported by the fact that cities with more restrictive zoning tend to have higher housing costs. *See* Joseph Gyourko et. al., *Superstar Cities* 65, at <http://www.nber.org/papers/w12355>; Ed Glaeser and Joe Gyourko, *The Economic Implications of Housing Supply* 16, at <http://realestate.wharton.upenn.edu/wp-content/uploads/2017/03/802.pdf>; Boyack, *supra* note 1, at 487–88 (comparing high-cost high-regulation San Francisco with low-cost, low-regulation Houston). I note that inadequate supply might not be the cause of high housing costs if construction costs had risen in recent years. But in fact, this is not the case. Housing construction costs have not materially risen since 1980. *See* Glaeser and

Nevertheless, anti-upzoning progressives argue that upzoning leads to gentrification and rising housing costs, because (1) upzoning causes land prices to increase and (2) new housing supply leads to increased demand for housing, and such “induced demand” caused prices to increase. Each of these arguments will be addressed in turn.

1. Land Prices

It could be argued that upzoning causes land prices to increase, as the possibility of new development made land more valuable to landowners, who are thus willing to pay more for land and pass on the costs to renters.⁵⁶ But if new housing increases prices, prohibiting new housing would lower prices.

The city of Los Angeles has tested this theory by downzoning the city to permit fewer dwellings. In 1960, the city was zoned to support 10 million people.⁵⁷ By contrast, today the city is zoned to support only 4.3 million people — just slightly more than its current population.⁵⁸

So if excluding housing made housing cheaper, Los Angeles land prices would have fallen, causing rents to fall. And yet rents, adjusted for inflation, have risen by 55 percent, while median renter income has grown by only 13 percent.⁵⁹ Rather than declining, land prices quintupled, from just over \$86,229 per house in 1984 to \$483,692 in 2014.⁶⁰

Moreover, the “new housing equals higher land prices”

Gyourko, *supra* at 10. Moreover, the gap between housing costs and construction costs is greatest in the most expensive markets. *Id.* at 11.

⁵⁶See Angotti, *supra* note 14, at 37 (“new development drives up land values and rents in surrounding blocks”); Tim Redmond, *Why Allowing Housing Makes Property More Expensive*, at <http://48hills.org/2016/05/18/allowing-housing-makes-property-expensive/>.

⁵⁷See Greg Morris, *The Homeowner Revolution: Democracy, Land Use and the Los Angeles Slow-Growth Movement, 1965-92*, at 3, at <http://escholarship.org/uc/item/6k64g20f#page-1>.

⁵⁸*Id.*

⁵⁹See Andrew Woo, *How Have Rents Changed Since 1960?*, at <https://www.apartmentlist.com/rentonomics/rent-growth-since-1960>.

⁶⁰See Lincoln Institute of Land Policy, *Land Prices for 46 Metro Areas*, at <http://datatoolkits.lincolnst.edu/subcenters/land-values/metro-are-a-land-prices.asp>. Home prices actually rose *less* rapidly than land prices. *Id.* (prices increased from \$141,284 in 1984 to \$684,000 in 2014) (“Lincoln”).

theory is based on the assumption that land prices are stable- that is, when they go up, they stay up. But in fact, land prices are quite volatile: in the New York City metropolitan area, the land price (apparently per house) swung from \$99,916 at the end of 1996 to \$418,592 at the end of 2006, down to under \$225,000 in early 2012, and up to \$250,187 in 2014.⁶¹ If land prices are less stable than rents, they may not affect rents as much as the theory suggests.

Even if upzoning did permanently increase land values, such increased land values need not lead to increased rents: if my parcel was worth \$100,000 but now is worth \$200,000, I can pass on the rising land prices by building one \$200,000 unit on my land- but I can also build two \$100,000 units, or even reduce housing prices by building multiple units costing less than \$100,000. As long as zoning does not limit the number of housing units on a parcel of land, landowners can always avoid raising prices by building more houses or apartments per parcel.

It follows that upzoning may contain housing costs even where land prices are on the rise. In the absence of restrictive regulation, sellers faced with rising land prices can recoup their costs by creating more units per parcel of land, rather than by building more expensive housing units.⁶² By contrast, a seller who is not allowed to densify can make a profit only by raising the price of its existing housing units.

2. Induced Demand

It could be argued that new housing induces gentrification by spurring demand for housing.⁶³ This claim would make sense if affluent people would only be willing to live in a given neighborhood if the city upzoned the area to permit

⁶¹*Id.*

⁶²See Lincoln, *supra* note 60.

⁶³See, e.g., Tim Redmond, *Editor's Notes*, San Francisco Bay Guardian Online, Feb. 21, 2012, <http://www.sfbg.com/2012/02/21/editors-notes> ("in a city that has limited space and nearly unlimited demand . . . There's no way to build enough new affordable rental housing, or housing that middle-class families can buy, to keep up with the demand.") A related argument is that housing supply is being soaked up by super-rich people who do not live in the units, but merely use them as places to hoard capital. However, even in high-cost New York City, only 1554 units cost over \$5 million and were purchased by absentee owners- a tiny part of the region's housing supply. See Dana Rubenstein, *Could De Blasio do a*

new housing- for example, if Chinatown's pre-upzoning housing supply was unusually old (and thus unappealing to the affluent). But in fact, the neighborhood's housing supply is slightly newer than that of most of Manhattan. 36.7 percent of zip code 10002 housing units (and 38.5 percent of pre-rezoning units) were built before 1939, as opposed to 43.4 percent for Manhattan as a whole.⁶⁴

Moreover, opponents of new housing make concessions that seem inconsistent with their view. If restrictive zoning rules promote affordability in low-income urban neighborhoods, such policies should logically promote affordability elsewhere. But Li writes that historically, "white suburbs have employed exclusionary zoning for years with the stating goal of maintaining property values and preserving open space, effectively barring housing affordable to low-income people of color."⁶⁵ So Li, like past generations of progressives,⁶⁶ admits that restrictive zoning makes housing more expensive. But if this is true, how can upzoning (that is, *less* restrictive zoning) also make housing expensive?

III. A Truly Progressive Solution

If, as I have suggested above, restrictive zoning increases housing costs, it logically follows that restrictive zoning actually *accelerates* gentrification and displacement. The more expensive the neighborhood, the harder it will be for poorer renters to stay in that neighborhood. So when low-income residents depart, their houses and apartments will be taken by more affluent people- in short, by gentrifiers. It is no accident that the cities most notorious for gentrification are the cities with the highest housing costs. For example, Li admits that displacement is most likely in "wealthy cities,

pied-a-terre tax?, at <http://www.capitalnewyork.com/article/city-hall/2014/09/8552990/could-de-blasio-do-pied-%C3%A0-terre-tax>.

⁶⁴See Factfinder, *supra* note 33. I calculated the percentage of pre-rezoning units by dividing the overall pre-1939 figure by the percentage of units built before 2000.

⁶⁵See Li, *supra* note 11, at 1213.

⁶⁶See *supra* notes 5–6 and accompanying data. See also Angotti, *supra* note 14, at 37, 51 (writing that "new development drives up land values and rents in surrounding blocks" while admitting that "Zoning . . . can be used to make it impossible to build housing affordable to low-income people"), 52–55 (suggesting that restrictive zoning in middle-class white neighborhoods excludes racial minorities).

like New York and San Francisco⁶⁷- both cities notorious for high housing costs.⁶⁸

But if more housing lowers rents, why is it that some New York neighborhoods experienced rent spikes after upzoning? As noted above, Chinatown's rents rose as rapidly after upzoning as before upzoning, and Williamsburg, another area upzoned in the mid-2000s, experienced much more significant rent hikes.⁶⁹ Li hints at an answer: "the majority of upzonings [in 2000s New York City] occurred in low-income neighborhoods of color, while the majority of downzonings occurred in affluent white neighborhoods."⁷⁰ In fact, the city downzoned more parcels than it upzoned.⁷¹ Upzoned and downzoned areas were sometimes in the same part of the city: for example, the city upzoned much of Chinatown, but restricted development in the affluent East Village a few blocks away.⁷² Because upzonings were often offset by downzonings, the city's housing supply as a whole did not rise enough to meet demand: between 2000 and 2015, the number of housing units in New York City increased by just over 200,000 (from 3.2 million to 3.42 million)⁷³ while the number of persons employed in the city increased by over

⁶⁷See Li, *supra* note 11, at 1196.

⁶⁸See Lincoln, *supra* note 60 (comparing housing costs of various cities).

⁶⁹See *supra* notes 48–49 and accompanying text.

⁷⁰See Li, *supra* note 11, at 1204. See also Genna L. Sinel, *New Density and Shrink-Wrapped Streets: Contextual Zoning Policy in New York City*, 11 New York Univ. J. L. & Liberty 359, 381 (2017) (same).

⁷¹See Sarah Laskow, *The quiet, massive rezoning of New York*, Politico, Feb. 24, 2014, at <http://www.politico.com/states/new-york/city-hall/story/2014/02/the-quiet-massive-rezoning-of-new-york-078398> (14 percent of city's building lots upzoned, 23 percent downzoned). Cf. Sinel, *supra* note 70, at 380 (because upzonings offset by downzonings, citywide density allowed by zoning code increased by only 2.6 percent).

⁷²*Id.* at 1206.

⁷³See Factfinder, *supra* note 33; See New York City Rent Guidelines Board, *2016 Housing Supply Report* 18, at http://www.nycrgb.org/downloads/research/pdf_reports/16HSR.pdf (roughly 20,000 new certificates of occupancy per year).

500,000 (from 3.76 million to 4.3 million).⁷⁴ And demand for rental properties increased more rapidly than the overall workforce: the number of renter households increased by 600,000 in New York City alone between 2006 and 2014, and by the same number in its suburbs.⁷⁵ The law of supply and demand suggests that rents would rise in such a situation, which is of course what came to pass.

If downzoning increases housing costs by constricting housing supply, it logically follows that upzoning *all* neighborhoods is likely to increase the supply of housing, and thus ultimately to hold down rents and housing prices.

IV. Conclusion

Some anti-gentrification activists argue that housing policy is a zero-sum game: that new housing for the middle and upper classes leads to gentrification, which in turn reduces the amount of housing available to lower-income households. As a result, these commentators endorse policies that discourage housing construction. But if restrictive cities have higher rents than less restrictive cities, it follows that restrictive zoning is likely to increase, rather than decrease, housing costs. And if restrictive cities have higher housing prices, it logically follows that such cities will have more cost-induced displacement than more permissive cities. In other words, cities need more upzoning, not less.

⁷⁴See Department of Labor, *Labor Statistics for the New York City Region*, at <https://www.labor.ny.gov/stats/nyc/> (go to “NYC, Seasonally Adjusted Total Employment 1990–2016) (increase from Dec. 2000 to Dec. 2015).

⁷⁵See Ingrid Gould Ellen and Brian Karfunkel, *Renting in America’s Largest Metropolitan Areas 7*, at http://furmancenter.org/files/NYU_Furman_Center_Capital_One_National_Affordable_Rental_Housing_Landscape_2016_9JUNE2016.pdf.